

iii) [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] (PrimeCo Ex. 2-M at 4; see PrimeCo Ex. 2 at 11-12,
lines 517-555) [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] (PrimeCo Ex. 2-N at 8) [REDACTED]
[REDACTED] (Devine, 1/17/01 Tr. at 267)

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
(Devine, 1/17/01 Tr. at 301, lines 5-11, lines 19-21)

[REDACTED]
[REDACTED] (PrimeCo Group Ex. 2-O) [REDACTED]
[REDACTED]
[REDACTED] (Compare PrimeCo Exs. 2-A, 2-B, 9, 11 and 14-31)

[REDACTED]
[REDACTED]
[REDACTED] (Compare PrimeCo Ex. 20 at DS1, § 2, pp. 9-10; PrimeCo Ex. 21 at DS1, § 2,
pp. 9-10; PrimeCo Ex. 22 at DS1, § 2, p. 5; with PrimeCo Ex. 11 at DS1, § 2, p. 10;
PrimeCo Ex. 2-A at DS1, § 2, pp. 8-9; PrimeCo Ex. 2-B at DS1, § 2, pp. 8-9; see also
PrimeCo Group Ex. 2-O at 2; 2-O at 8) [REDACTED]

[REDACTED]
[REDACTED] (Id.)

[REDACTED]
[REDACTED]. (Compare PrimeCo Ex. 23 at DS1, § 2, p. 5; PrimeCo Ex. 24 at DS1, § 2, p. 5; PrimeCo Ex. 25 at DS1, § 2, p. 5; with PrimeCo Ex. 11 at DS1, § 2, p. 10; PrimeCo Ex. 2-A at DS1, § 2, pp. 8-9; PrimeCo Ex. 2-B at DS1, § 2, pp. 8-9; see also PrimeCo Group Ex. 2-O at 4; 2-O at 10)

[REDACTED]
[REDACTED] (Id.)

[REDACTED]
[REDACTED] (Compare PrimeCo Exs. 17-19 [REDACTED], 26-28 [REDACTED] with PrimeCo Exs. 2-A, 2-B, 11; see also PrimeCo Group Ex. 2-O at 3; 2-O at 6; 2-O at 9; 2-O at 12) [REDACTED]

[REDACTED] (Compare [REDACTED] PrimeCo Exs. 29-31 [REDACTED] with PrimeCo Exs. 2-A, 2-B, 11; see also PrimeCo Group Ex. 2-O at 5; 2-O at 11)

- c. Ameritech's purported attempts to improve its DS1 Service have been and continue to be untimely and inadequate.

As indicated above, Ameritech formed the Five Star Team in response to PrimeCo's frequently expressed concerns about the quality of Ameritech's DS1 Service. (PrimeCo Ex. 1 at 8, lines 357-60; PrimeCo Ex. 3 at 215-219; PrimeCo Ex. 4 at 8, lines 382-83; Ameritech Ex. 1 at 15, lines 10-11; Borner, 1/17/2001 Tr. at 237) In addition to agreeing [REDACTED] PrimeCo's DS1 Service, in or

around December 1998, the Five Star Team began developing certain “performance improvement” initiatives purportedly designed to enable Ameritech to achieve [REDACTED] DS1 Service quality. (PrimeCo Ex. 1 at 8, lines 371-84; PrimeCo Ex. 3 at 5, lines 226-27; Ameritech Ex. 1.0 at 15, lines 11-13; Devine, 1/18/2001 Tr. at 268)

The initiatives developed by the Five Star Team failed to materially improve the quality of the DS1 Service Ameritech provided to PrimeCo. (See supra at 17) PrimeCo believes that the principal reason the initiatives failed is because those initiatives treated the symptoms of Ameritech’s DS1 Service problems rather than correcting the principal cause of the problems: a poorly installed and inadequately maintained aging cable plant. (PrimeCo Ex. 3 at 6, lines 280-81; PrimeCo Ex. 4 at 1, lines 6-36; Borner, 1/17/2001 at 207-08)

- i) Ameritech’s limited installation of APS technology has not improved the quality of its DS1 Service.

One of Ameritech’s initiatives was to install Automatic Protection Switching (“APS”) equipment on a limited number of PrimeCo’s DS1 circuits. (PrimeCo Ex. 4 at 11, lines 538-44; Ameritech Ex. 1.0 at 18, lines 9-11) APS is designed to prevent an outage from occurring by switching traffic from an “active” circuit to a “standby” circuit in the event the active circuit fails. (PrimeCo Ex. 4 at 12, lines 548-53; Ameritech Ex. 1 at 18, lines 15-16; Bartsch, 1/18/2001 at 522) Thus, APS does not prevent circuits from failing.

Although potentially beneficial, APS has not had any material impact on the quality of DS1 Service Ameritech provides to PrimeCo, particularly in light of the fact that Ameritech only installed APS on [REDACTED] of PrimeCo’s approximately [REDACTED] DS1 circuits. (PrimeCo Ex. 4 at 11, lines 538-39; supra at 17) PrimeCo concludes that such a small

number of APS installations could not and have not materially affected the overall quality of Ameritech's DS1 Service. (PrimeCo Ex. 4 at 11, lines 538-44) Moreover, on [REDACTED] of the circuits where APS was installed, the APS technology caused additional problems that resulted in the APS equipment being disabled. (PrimeCo Ex. 4 at 11, lines 540-42) Further, due to the engineering complexity introduced by the installation of APS equipment, Ameritech generally takes longer to repair APS protected circuits than it takes to repair other circuits. (PrimeCo Ex. 4 at 12, lines 572-73) For these reasons, PrimeCo believes that APS alone is not an adequate solution for the problems with Ameritech's DS1 Service.

- ii) Improving communication procedures has not improved the quality of Ameritech's DS1 Service.

Following numerous complaints from PrimeCo (as well as other wholesale customers) regarding the difficulty of communicating with Ameritech about the status of trouble tickets, Ameritech implemented the Electronic Bonded Ticket Administration ("EBTA") system, a web-based system that allows Ameritech's wholesale customers (not just PrimeCo) to check the status of trouble tickets on-line. (PrimeCo Ex. 4 at 11, lines 515-19; Ameritech Ex. 1.0 at 17, lines 4-16) The EBTA system was designed to eliminate the long periods of time wholesale customers were spending on hold while Ameritech technicians checked the status of trouble tickets. (PrimeCo Ex. 4 at 11, lines 512-19; Ameritech Ex. 1.0 at 17, lines 4-5) Thus, EBTA is not designed to prevent trouble from occurring -- it is designed solely to improve communications after trouble occurs. (PrimeCo Ex. 4 at 11, lines 514-15) Further, as PrimeCo has discovered, EBTA is frequently unavailable, and even when it is available, PrimeCo has had problems obtaining adequate status information. (PrimeCo Ex. 4 at 11, lines 515-19)

- iii) Monitoring just over half of PrimeCo's DS1 circuits has not improved the quality of Ameritech's DS1 Service.

According to Ameritech witness Steven L. Bartsch ("Bartsch"), Ameritech's Proactive Maintenance Center ("PMC"), which is designed to immediately alert Ameritech personnel when a fault in a circuit occurs so that corrective action may be taken, is used to monitor some of PrimeCo's circuits. (Ameritech Ex. 2.0 at 20, lines 15-21) Ameritech is using its PMC to monitor [REDACTED] PrimeCo's DS1 circuits, however. (Ameritech Ex. 2.0 at 22, lines 4-5) Further, the PMC does not prevent circuit failures from occurring. (PrimeCo Ex. 4 at 14, lines 655-63)

- iv) Adding service technicians has not improved the quality of Ameritech's DS1 Service.

Ameritech contends that it has added 161 technicians in its testing group, 158 Digital Operations Group technicians, and 158 employees in its central office group in an effort to improve the quality of its DS1 Service. (Ameritech Ex. 2.0 at 14-15, lines 20-23, 1-3) These employees are assigned to locations throughout Ameritech's entire five-state region. (Bartsch, 1/18/01 Tr. at 529) Ameritech was unable to specify the number of these technicians who are responsible for servicing Ameritech's wireless customers in Illinois. (Bartsch, 1/18/01 Tr. at 529) Further, despite Ameritech's addition of new technicians, PrimeCo has seen no improvement in the quality of Ameritech's DS1 Service. (PrimeCo Ex. 4 at 15, lines 705-07)

- v) Inspections and corrective actions at PrimeCo's cell sites have not improved the quality of Ameritech's DS1 Service.

During the summer of 1999, Ameritech engaged in an effort to inspect its worst performing DS1 circuits. (Ameritech Ex. 1.0 at 16, lines 15-16) However, the corrective actions Ameritech performed as a result of those inspections -- such as

correcting improper bonding and grounding -- have not materially improved the quality of Ameritech's DS1 Service. (PrimeCo Ex. 3 at 8, lines 349-56; see supra at 17) Moreover, PrimeCo technicians have discovered additional instances of improper bonding and grounding of Ameritech equipment. (PrimeCo Ex. 4 at 9, lines 430-39; PrimeCo Exhibit 4-V)

Also, the photographs admitted into evidence as PrimeCo Group Exhibits 4-Q through 4-U show that Ameritech installed circuits in a sloppy and haphazard fashion, and fails to maintain its installations once installed. (PrimeCo Ex. 4 at 1-7; PrimeCo Group Exs. 4-Q - 4-U) Significantly, Ameritech described the installations depicted in PrimeCo Group Exhibits 4-Q through 4-U as not being the type of installations Ameritech would "like to see" and "not as [they] should be in the final configuration" (Bartsch, 1/18/01 Tr. at 464, 466, 509), and also admitted that those circuits are more likely to fail than circuits that are properly installed. (Bartsch, 1/18/01 Tr. at 510-11)

Finally, Ameritech has no proactive system in place to identify improperly installed and maintained circuits such as those depicted in PrimeCo Group Exhibits 4-Q through 4-U. (PrimeCo Ex. 3 at 6, lines 270-74; PrimeCo Ex. 4 at 13-14, lines 625-34, 647-63) In fact, Ameritech representatives have admitted that circuits are not inspected unless trouble occurs. (PrimeCo Ex. 4 at 8, lines 360-62). Additionally, tracking the "New Circuit Failure Rate" (which is a measure included in Ameritech's monthly performance reports) will not necessarily identify circuits installed in the fashion depicted in PrimeCo Group Exhibits 4-Q through 4-U because those improperly installed circuits were not identified through the New Circuit Failure Rate

measure. (PrimeCo Ex. 4 at 13, lines 630-34; Bartsch, 1/18/01 Tr. at 510, lines 13-17)

- vi) "[REDACTED]" has not improved the quality of Ameritech's DS1 Service.

According to Ameritech, "[REDACTED]" may improve the quality of DS1 Service Ameritech provides to PrimeCo. (Ameritech Ex. 3.0 at 4, lines 12-23) The evidence does not appear to support this proposition. [REDACTED] is a [REDACTED] plan that Ameritech is implementing to improve its DSL service. (Papadakis, 1/18/01 Tr. at 548) In the process of implementing [REDACTED], Ameritech plans to [REDACTED] [REDACTED]. (Ameritech Ex. 3.0 at 4, lines 12-23; Papadakis, 1/18/01 Tr. at 200 ("[REDACTED] [REDACTED]")) Thus, [REDACTED] is not designed to improve the quality of Ameritech's DS1 Service. (Papadakis, 1/18/01 Tr. at 547-48) Accordingly, as Ameritech admitted, any improvement in the DS1 Service it provides PrimeCo will be incidental. (PrimeCo Ex. 4 at 12, lines 579-88)

Also, Ameritech's claims regarding the possible benefit [REDACTED] may have on PrimeCo's DS1 Service are purely speculative. As of this date, not a single PrimeCo circuit has been affected by [REDACTED]. (Papadakis, 1/18/01 Tr. at 549) Further, Ameritech has no specific schedule for when any circuits used to provide DS1 Service to PrimeCo may be [REDACTED]; thus, it may be years before any of PrimeCo's DS1 circuits [REDACTED]. (Papadakis, 1/18/01 Tr. at 549) Even Ameritech admits that is too long to wait to improve the quality of the DS1 Service it provides to PrimeCo. (PrimeCo Ex. 4 at 12, lines 586-88)

Finally, [REDACTED] would affect a maximum of [REDACTED] of the [REDACTED] DS1 circuits Ameritech provides PrimeCo. (Ameritech Ex. 3.0 at 5, lines 11-13;

Papadakis, 1/18/2001 Tr. at 548-49) Thus, it is unclear whether [REDACTED] ever will have any significant positive impact on the quality of the DS1 Service Ameritech provides to PrimeCo.

2. Ameritech's Provision of Unreasonably Poor DS1 Service Impermissibly Impedes Competition

- a. Ameritech's provision of substandard DS1 service constitutes a per se impediment to competition under Section 13-514 of the Act.

As previously noted, three types of actions that constitute per se impediments to competition under Section 13-514 of the Act are:

- (1) unreasonably refusing or delaying interconnections or providing inferior connections to another telecommunications carrier;
- (2) unreasonably impairing the speed, quality, or efficiency of services used by another telecommunications carrier; [and]
- (6) unreasonably acting or failing to act in a manner that has a substantial adverse effect on the ability of another telecommunications carrier to provide service to its customers.

220 ILCS § 5/13-514(1), (2) and (6) Ameritech's consistent provision of substandard DS1 Service to PrimeCo falls within each of these provisions.

Ameritech's DS1 circuits are the facilities that connect PrimeCo's cell sites to PrimeCo's switch. (PrimeCo Ex. 1 at 2, lines 75-77; Cane, 1/17/01 Tr. at 34) For the reasons previously stated, these connections are a critical element of PrimeCo's network; thus, PrimeCo relies on Ameritech's DS1 Service to provide reliable, high quality service to its own customers. (PrimeCo Ex. 1 at 2, lines 87-90) Because Ameritech's DS1 circuits continuously fail to satisfy even [REDACTED], supra at 14-17, Ameritech is violating Section 13-514(1) of the Act by providing PrimeCo with "inferior connections."

Ameritech's provision of poor quality DS1 Service also unreasonably impairs the speed, quality and efficiency of services used by PrimeCo, which is prohibited by Section 13-514(2) of the Act. Since at least mid-1999, Ameritech has known that failures [REDACTED] could be significantly reduced by: (1) replacing copper facilities with fiber (the report stated that "[f]iber facilities have a failure rate that is 25% that of copper"); (2) installing APS; and (3) monitoring 90% of all DS1 circuits using its PMC. (PrimeCo Ex. 2-N) Notwithstanding these findings, Ameritech has not replaced and does not plan to replace all of PrimeCo's copper facilities with fiber. (Ameritech Ex. 3.0 at 4-5; see Papadakis, 1/18/01 Tr. at 548-49) Ameritech has installed APS on [REDACTED] of PrimeCo's [REDACTED] circuits (supra at 20), and Ameritech does not monitor all of PrimeCo's DS1 circuits at its PMC (supra at 22; Ameritech Ex. 2.0 at 21, lines 1-4). Further, Ameritech has failed to take any other actions sufficient to materially improve the quality of its DS1 Service. Ameritech's failure to take appropriate actions to improve its DS1 Service is unreasonable and, as set forth herein, impairs the speed, quality and efficiency of the DS1 Service used by PrimeCo.

Finally, by providing PrimeCo with substandard DS1 Service and by failing to improve the quality of that service -- despite its repeated promises to do so and its ability to do so -- Ameritech is unreasonably acting in a manner that has a substantial adverse effect on PrimeCo's ability to provide service to its customers in violation of Section 13-514(6) of the Act. (PrimeCo Ex. 5 at 3, lines 130-39) Although PrimeCo takes steps to ensure that it can provide its customers with reliable service despite Ameritech's poor quality DS1 Service (PrimeCo Ex. 1 at 6, lines 256-268; Prime Ex. 5 at 4, lines 173-75), the poor quality of Ameritech's service hampers PrimeCo's ability

to economically provide the high quality, reliable service necessary for PrimeCo to effectively and efficiently compete in Chicagoland's wireless telecommunications market. (PrimeCo Ex. 5 at 3-5, lines 144-204)

- b. The uncontroverted evidence shows that Ameritech's poor quality DS1 Service increases PrimeCo's costs of doing business and detrimentally impacts PrimeCo's ability to attract and maintain customers.

PrimeCo witness D. Kraig Pyer ("Pyer"), PrimeCo's Vice-President and General Manager, Midwest Region, explained that the Chicago market is the third largest telecommunications market in the United States and that there is intense competition among PrimeCo, the approximately five other network-based market participants, and those companies that act as resellers. (PrimeCo Ex. 5 at 1, lines 8-9, and at 2, lines 62-76) Consequently, PrimeCo must have the ability to control its costs in order to maintain the pricing flexibility required to effectively compete in this market. (PrimeCo Ex. 5 at 3, lines 103-08)

Due to the frequency and duration of Ameritech DS1 circuit failures, PrimeCo has had to incur significant additional costs to operate its network, which has reduced PrimeCo's pricing flexibility. (PrimeCo Ex. 1 at 6, lines 256-268 and 7 at 299-319; PrimeCo Ex. 5 at 4, lines 154-63) In addition, PrimeCo's marketing costs are higher due to Ameritech's provision of substandard DS1 Service. (PrimeCo Ex. 5 at 4, lines 197-200). According to Pyer, PrimeCo expends extra marketing dollars in order to combat the possible perception that its network is not reliable (PrimeCo Ex. 5 at 4, lines 197-200), and these additional expenses are reasonably attributable to Ameritech because Ameritech's poor quality DS1 Service is the single largest source of network outages on PrimeCo's system (PrimeCo Ex. 5 at 3, lines 130-32 and at 4-5,

lines 200-04; PrimeCo Ex. 1-C; Pyer, 1/17/01 Tr. at 194 ("seven out of ten of [PrimeCo's] network problems are caused by DS1 failures")).

In addition to maintaining pricing flexibility, to successfully compete in the Chicago market and attract and maintain customers, PrimeCo must consistently provide very high quality service. (PrimeCo Ex. 5 at 3, lines 101-10) This is particularly true because PrimeCo, as a regional carrier, is competing against national carriers that are not as dependent on their service quality reputations in the Chicago market as is PrimeCo. (PrimeCo Ex. 1 at 2-3, lines 95-101; PrimeCo Ex. 5 at 2, lines 101-10) Ameritech's provision of unreasonably poor DS1 Service detrimentally affects PrimeCo's ability to attract and maintain customers because the frequent failure of Ameritech DS1 circuits reduces the capacity, quality and reliability of PrimeCo's network. (PrimeCo Ex. 1 at 6, lines 272-78; PrimeCo Ex. 3 at 6-7, lines 295-312; Cane, 1/17/01 Tr. at 98-109)

Because Ameritech's substandard DS1 Service is the largest cause of outages on PrimeCo's system (PrimeCo Ex. 1-C), it is reasonable to conclude that a percentage of the customers PrimeCo loses for reasons having to do with service quality have been lost as a result of Ameritech's poor DS1 Service. (PrimeCo Ex. 5 at 4, lines 173-92)

[REDACTED]

[REDACTED]

[REDACTED] (PrimeCo Ex. 5 at 4, lines 184-92; Cane,

1/17/01 at 98, 103-09; see PrimeCo Ex. 3 at 6-7, lines 295-312)

3. By Its Conduct, Ameritech Knowingly Is
Impeding the Development of Competition
in Illinois' Wireless Telecommunications Market

As previously set forth, Ameritech has been fully aware of the poor quality of the DS1 Service it provides PrimeCo and the adverse effect its poor quality service has on PrimeCo's ability to compete ever since Ameritech executed the 1998 Contract. (PrimeCo Ex. 1 at 7, lines 324-43, at 8, lines 357-66, at 9, lines 408-17; e.g., PrimeCo Ex. 2-A, 2-B, 2-L, 2-M, 2-N, 2-P) Notwithstanding Ameritech's knowledge and notwithstanding the extended period of time Ameritech has had to improve its DS1 Service, the evidence in this Docket shows that Ameritech has simply failed to devote sufficient resources to this task. (PrimeCo Ex. 9) Instead, it appears that Ameritech continually has attempted to appease PrimeCo with empty promises, and thereby avoid expending the resources necessary to fulfill its statutory [REDACTED] obligations. (PrimeCo Ex. 1 at 8-9, lines 389-401; see generally PrimeCo Ex. 2-N)

Due to PrimeCo's inability to informally persuade Ameritech to improve its DS1 Service, on October 12, 2000, PrimeCo sent Ameritech a letter specifically describing the poor quality of Ameritech's DS1 Service. (PrimeCo Complaint, Ex. A; PrimeCo Ex. 1 at 9, lines 422-25) In that letter, PrimeCo expressly advised Ameritech that Ameritech's "provision of DS1 Service to PrimeCo is unreasonably poor in quality and impedes PrimeCo's ability to effectively compete in the wireless telecommunications market in Illinois." (Verified Complaint, Ex. A at 1) Further, PrimeCo noted the unacceptable results of Ameritech's DS1 Service for the twelve-month period ending August 31, 2000, specifically pointing out, among other things, the excessively high unavailability and failure rates of Ameritech's DS1 circuits and Ameritech's failure to [REDACTED]. (Verified

Complaint, Ex. A at 1-2) Ameritech has failed to correct the violations described in PrimeCo's October 12, 2000 letter. (PrimeCo Ex. 1 at 9, lines 429-30)

4. [REDACTED]

The uncontroverted evidence in this Docket shows that [REDACTED]
[REDACTED]
[REDACTED]. (PrimeCo Ex. 1 at 9, lines 443-45; PrimeCo Ex. 2 at 14-16, lines 677-776; PrimeCo Ex. 5 at 5, lines 209-11)
This fact further supports the conclusion that Ameritech's provision of substandard DS1 Service to PrimeCo impedes the development of competition in Illinois' wireless telecommunications market.

[REDACTED]
[REDACTED]. (Cane, 1/17/01 Tr. at 162; PrimeCo Ex. 2 at 15-16, lines 727-38) [REDACTED]
[REDACTED]

[REDACTED] (Ameritech Ex. 4.0 at 7, lines 3-12, n. 4); ([REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] (Cane, 1/17/01 Tr. at 162; PrimeCo Ex. 2 at 15-16, lines 727-38), [REDACTED]
[REDACTED]

[REDACTED] (PrimeCo Ex. 2 at 15-16, lines 727-38; Cane, 1/17/01 Tr. at 161-64)

[REDACTED]

[REDACTED]

[REDACTED] (Cane, 1/17/01 Tr. at 92-93, 163-64; PrimeCo Ex. 2 at 15, lines 727-28)

[REDACTED]

[REDACTED] For PrimeCo to obtain such service, the ASP would have to establish either a landline or a wireless connection between PrimeCo's cell sites and nodes on the ASP's network.⁶ (PrimeCo Ex. 2 at 15; Aron, 1/18/01 Tr. at 377) ASPs that utilize landline facilities to provide DS1 Service generally have [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (PrimeCo Ex. 2 at 15, lines 698-703) [REDACTED]

[REDACTED]

⁵ [REDACTED] [REDACTED]
[REDACTED] (PrimeCo Ex. 2 at 10, lines 458-61; Cane, 1/17/01 Tr. at 76)
[REDACTED] (PrimeCo Ex. 2 at 10, lines 458-61)

⁶ An ASP could provide DS1 service to PrimeCo by leasing Ameritech's "local loop" facilities, i.e., Ameritech DS1 circuits connecting PrimeCo cell sites to an Ameritech central office at which the ASP was collocated. (PrimeCo Ex. 2 at 14-15, lines 683-96) However, DS1 service provided in this way would not resolve the majority of PrimeCo's DS1 service problems, which are principally caused by deficiencies associated with Ameritech's local loop facilities. (PrimeCo Ex. 2 at 15, lines 690-96; Ameritech Ex. 3.0 at 3, lines 5-6) Indeed, PrimeCo's use of an ASP that leased Ameritech's local loop facilities could increase the duration of the outages PrimeCo experiences by introducing a third party between PrimeCo and Ameritech for reporting and troubleshooting outages. (PrimeCo Ex. 2 at 15, lines 693-96)

[REDACTED]

[REDACTED] (Cane, 1/17/01 Tr. at 93, 95)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. (See PrimeCo Ex. 2 at 15; Aron, 1/18/01 Tr. at 425)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] (PrimeCo Ex. 2-E at § 8.1) Thus, if

PrimeCo contracted with an ASP for DS1 Service and terminated Ameritech DS1 Service as soon as that ASP was ready to begin providing service to PrimeCo,

[REDACTED]

[REDACTED]

[REDACTED]. (PrimeCo Ex. 2-E at §§ 8 and 13.3 - 13.5)

Also, during any time period between PrimeCo's termination of Ameritech's DS1 Service and PrimeCo's receipt of DS1 Service from an ASP, PrimeCo would have to obtain DS1 Service under Ameritech's tariff, which would require PrimeCo to pay rates for DS1 Service that are significantly higher than the rates in the 1998 Contract. (Ameritech Ex. 1.0 at 7, lines 6-9) [REDACTED]

[REDACTED]

public rights-of-way, and issues relating to PrimeCo's ability to collocate at Ameritech central offices where ASPs are collocated. (Cane, 1/17/01 Tr. at 94-95)

Due to the cost issues outlined above and various practical considerations (and associated costs), [REDACTED]

[REDACTED]. (PrimeCo Ex. 2 at 16, lines 743-76; Cane, 1/17/01 Tr. at 162-64) The microwave or other broadband wireless radio technologies currently used to provide wireless DS1 Service generally require the installation of microwave or similar antennas at PrimeCo's cell sites. (PrimeCo Ex. 2 at 16, lines 744-48) [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. (PrimeCo Ex. 2 at 16, lines 752-57) [REDACTED]

[REDACTED]

[REDACTED]. (PrimeCo Ex. 2 at 16, lines 749-52)

In addition, the necessary microwave and/or radio antennas utilized to provide wireless DS1 Service require either point-to-point or point-to-multi-point lines-of-sight between PrimeCo cell sites and an ASP's microwave or radio site location. (PrimeCo Ex. 2 at 16, lines 744-48; Ameritech Ex. 4.0 at 47; Aron, 1/18/01 Tr. at 395-96) [REDACTED]

[REDACTED]

[REDACTED].

(PrimeCo Ex. 2 at 16, lines 767-72)

Further, many landlords treat microwave or similar antennas in the same manner as they treat additional carriers. (PrimeCo Ex. 2 at 16, lines 758-59)

[REDACTED]

[REDACTED]. (PrimeCo Ex. 2 at 16, lines 758-60; see Aron, 1/18/01 Tr. at 395)

As Aron admitted, all of the above-mentioned costs and considerations would have to be considered to determine whether it is economically feasible or reasonable for PrimeCo to obtain DS1 Service from an ASP. (Aron, 1/18/01 Tr. at 40, 411-12) As Aron further admitted, in asserting that PrimeCo can obtain DS1 Service from ASPs, she did not even consider whether PrimeCo could profitably finance a build out or obtain DS1 Service from an ASP if PrimeCo had to agree to absorb all of the associated hard costs, termination penalties and costs for tariffed DS1 Service. (Aron, 1/18/01 Tr. at 409-12, 421) Instead, Aron limited her analysis to whether ASPs are capable of providing DS1 Service to PrimeCo and whether they could provide that service profitably. (Aron, 1/18/01 Tr. at 420-21) For this reason alone, Aron's conclusion that PrimeCo can obtain DS1 Service from an ASP is untenable.

Other facts also call Aron's conclusion into question. For example, despite Aron's conclusion that PrimeCo can obtain DS1 Service from an ASP because ASPs are capable of providing such service and they would find it profitable to build out to PrimeCo's cell sites (Ameritech Ex. 4.0 at 13, lines 6-9; Aron, 1/18/01 Tr. at 371-72, 383, 405, 420-21), [REDACTED] (PrimeCo Ex. 2 at 15-16, lines 727-38; Cane, 1/17/01 Tr. at 76, 90-94, 162-64) This reality, as Aron cannot deny, strongly suggests that ASPs do not agree with her contention that it would be profitable for them to build out to PrimeCo's cell sites. (Aron, 1/18/01 at 407 ("If [ASPs] didn't find it profitable, in the long run then I don't think they would want to do it," i.e., build out.))

C. BASED ON AMERITECH'S VIOLATION OF SECTION 13-514 OF THE PUBLIC UTILITIES ACT, PRIMECO IS ENTITLED TO STATUTORY RELIEF

The evidence in the record shows that Ameritech engaged in per se violations of Section 13-514 of the Act by: (1) providing PrimeCo with inferior connections; (2) impairing the speed, quality or efficiency of DS1 Service utilized by PrimeCo; and (3) acting in a manner that has a substantially adverse effect on PrimeCo's ability to provide its customers with the high quality wireless telecommunications services they demand. (Supra at 25-30) The evidence shows that Ameritech knowingly provides PrimeCo with poor quality DS1 Service. (Supra at 29-30) The evidence also shows that Ameritech's provision of poor quality DS1 Service to PrimeCo is unreasonable, because although Ameritech is able [REDACTED] to provide PrimeCo with DS1 Service that satisfies reasonable performance standards, Ameritech has been unwilling to take the steps necessary to do so. (Supra at 14-17, 29) Accordingly, the Commission should find that Ameritech has knowingly and unreasonably engaged in per se violations of Section 13-514 of the Act and should grant PrimeCo relief against Ameritech consisting of an order including "directions and a deadline for correction of [Ameritech's] violation" of Section 13-514. (220 ILCS §5/13-514(d)(7-8))

1. The Commission Should Order Ameritech to
Timely Provide PrimeCo with DS1 Service That
Satisfies Reasonable Performance Standards

Based on the undisputed reasonableness of the [REDACTED]
[REDACTED], the
Commission is authorized to direct Ameritech to provide PrimeCo with DS1 Service that satisfies [REDACTED]. However, because Ameritech does not regularly and customarily measure and track its performance in the manner [REDACTED], PrimeCo

proposes that the Commission require Ameritech to provide it with DS1 Service that satisfies [REDACTED] performance standards expressed in terms consistent with Ameritech's customary tracking and reporting procedures.⁸ PrimeCo specifically proposes that the Commission order Ameritech to comply with the following reasonable performance standards: unavailability of .02% on a twelve-month rolling average, and failure rate of 5% on a twelve-month rolling average.

a. The performance standards PrimeCo is proposing are

[REDACTED]

[REDACTED]

[REDACTED] the most compelling evidence regarding the reasonableness of the performance standards PrimeCo proposes that the Commission require Ameritech to satisfy. [REDACTED]

[REDACTED]

[REDACTED]. (PrimeCo Ex. 2-E, §13.5) Stated

otherwise, [REDACTED]

[REDACTED].

If Ameritech made permanent improvements sufficient to reduce its unavailability rate to .02% or below [REDACTED], Ameritech would likely be able to achieve a rolling average unavailability of .02% over a twelve-month period, irrespective of monthly fluctuations in its performance. Accordingly, requiring

⁸ As indicated by the cumulative performance statistics included in Ameritech's monthly performance reports, Ameritech regularly measures its performance by averaging the weighted results of its monthly performance. (E.g., PrimeCo Ex. 2-A and Ex. 9) [REDACTED]

[REDACTED]

(PrimeCo Ex. 2-E, §§13.4 and 13.5)

Ameritech to ensure that the average unavailability of its DS1 circuits is .02% over a twelve-month period should not impose a significantly different burden on Ameritech

[REDACTED]

Further, the .02% average unavailability rate PrimeCo is proposing is significantly less stringent than [REDACTED]. (PrimeCo Ex. 2 at 7, lines 343-46; PrimeCo Exs. 2-C, 2-K, 2-L, and 8) Thus, a rolling average unavailability rate of .02% is a reasonable performance standard.

The same analysis applies to Ameritech's [REDACTED]. (PrimeCo Ex. 2-E, §13.4) [REDACTED]

If Ameritech made permanent improvements sufficient to reduce the failure rate of its DS1 circuits to 5% or below [REDACTED], Ameritech would likely be able to achieve a rolling average failure rate of 5% over a twelve-month period, irrespective of monthly fluctuations in its performance. Thus, requiring Ameritech to ensure that the average failure rate of its DS1 circuits is 5% over a twelve-month period should not impose a significantly different burden on Ameritech [REDACTED]

[REDACTED]

Further, the 5% average failure rate PrimeCo is proposing is significantly less

stringent than [REDACTED]
[REDACTED]. (PrimeCo Ex. 2 at 7, lines 346-47; PrimeCo Exs. 2-C, 2-K, 2-L; Devine, 1/17/2001 Tr. at 279, 285) Thus, a rolling average failure rate of 5% is a reasonable performance standard.

In addition, considering the average results of Ameritech's performance over a twelve-month period achieves the same goal as the comparative evaluation of monthly performance results [REDACTED]: namely, ensuring fair and accurate evaluation of Ameritech's performance by minimizing the significance of fluctuations or aberrations that may occur during any particular month. Thus, [REDACTED]
[REDACTED], the performance standards PrimeCo is proposing are fair to Ameritech. However, if Ameritech raises any legitimate concerns about PrimeCo's proposed performance standards, PrimeCo proposes that the Commission require Ameritech to satisfy the reasonable minimum performance standards [REDACTED]
[REDACTED].

- b. The Commission should require Ameritech to meet the proposed performance standards on or before October 1, 2001.

Since entering into the 1998 Contract, Ameritech has had ample opportunity to improve the performance of its DS1 Service. Ameritech's failure to do so has been entirely within Ameritech's control. Accordingly, Ameritech now should be required to satisfy the performance standards PrimeCo has proposed by October 1, 2001, which would give Ameritech over six months from the date of the Commission's order to achieve the required average performance levels.

To ensure that Ameritech's ability to satisfy the proposed performance

standards is not affected by its performance prior to the entry of the Commission's order, PrimeCo further proposes that Ameritech's compliance with the proposed performance standards be measured using a six-month rolling average until twelve months from the date on which the Commission enters its order (until approximately April 2002). Thus, by October 1, 2001, Ameritech would be required to achieve a rolling average unavailability of .02% and a rolling average failure rate of 5%, measured by its performance during the period from April 1, 2001 through September 30, 2001. On November 1, 2001, Ameritech's compliance would be measured by its performance from May 1, 2001 through November 1, 2001. This rolling six-month average formula should continue until March 31, 2001. Beginning April 2002, Ameritech's compliance should be measured using a twelve-month rolling average, with the first twelve-month period being April 2001 through March 2002.

2. The Commission Should Require Ameritech to Prepare and File a Plan for Achieving the Proposed Performance Standards

In addition to requiring Ameritech to provide PrimeCo with DS1 Service that satisfies PrimeCo's proposed performance standards, the Commission should direct Ameritech to provide PrimeCo and the Commission's Staff with a plan describing the specific actions Ameritech will take to satisfy the proposed performance standards, the expected results of each of those actions, and the date(s) on which each action will be taken ("Action Plan"). Ameritech should be required to submit its Action Plan within twenty-one days of the date on which the Commission enters its order in this Docket, and PrimeCo should be permitted an opportunity to respond to Ameritech's Action Plan within ten days of PrimeCo's receipt of the plan. Following the receipt of any response PrimeCo may make, the parties should engage in a good faith effort to resolve any differences. If a resolution cannot be reached, either party should have the right

to file a request for Commission review of Ameritech's Action Plan in this Docket.

The Commission also should direct Ameritech to provide PrimeCo and the Commission's Staff with a monthly report regarding the status of Ameritech's implementation of its Action Plan as well as monthly performance results for Ameritech's DS1 Service to PrimeCo in Illinois that measure unavailability and failure rate. Finally, Ameritech should be required to make the data on which its monthly performance results are based available for review by the Commission's Staff or PrimeCo upon request.

IV. CONCLUSION

For the reasons stated herein, and all reasons appearing of record, PrimeCo Personal Communications respectfully requests that the Commission enter findings consistent with the evidence in the record and enter an order directing Ameritech to correct its violations of Section 13-514 of the Act by providing PrimeCo with DS1 Service that satisfies the reasonable performance standards proposed herein by October 1, 2001.

Dated: February 2, 2001

Respectfully submitted,

PRIMECO PERSONAL COMMUNICATIONS

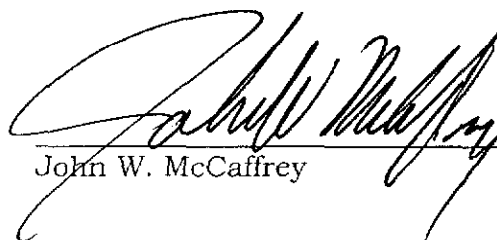
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PROOF OF SERVICE

I, John W. McCaffrey, one of counsel to PrimeCo Personal Communications, hereby certify that copies of the foregoing Redacted and Proprietary versions of the Initial Brief of PrimeCo Personal Communications were filed on the e-docket and copies were served on each of the persons on the attached Service List, at the addresses specified, by e-mail and in the manner indicated on the Service List, at Three First National Plaza, 70 W. Madison St., Chicago, Illinois 60602, on February 2, 2001.



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